

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MIGUEL FELICIANO,	§
	§
Defendant Below,	§ No. 169, 2011
Appellant,	§
	§ Court Below – Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. I.D. No. 1009025794
	§
Plaintiff Below,	§
Appellee.	§

Submitted: September 28, 2011

Decided: October 5, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

**O R D E R**

This 5th day of October 2011, it appears to the Court that:

1) The defendant-appellant, Miguel Feliciano (“Feliciano”), was indicted on one count of Carrying a Concealed Deadly Weapon (“CCDW”) in violation of Title 11, section 1442 of the Delaware Code. Following a one-day jury trial, Feliciano was found guilty. He was sentenced to two years at Level V, suspended after ninety days at Level V for one year at supervision Level III.

2) Feliciano has raised one claim in this direct appeal. He argues that section 1442 was applied unconstitutionally, under the Delaware Constitution, to the facts of his case. Article I, section 20 of the Delaware

Constitution provides citizens the “[r]ight to keep and bear arms for the defense of self, family, home and State[.]” Therefore, Feliciano submits that the Delaware Constitution contains an implicit right to carry concealed weapons on one’s own property. Feliciano asserts that because he had a right to carry a concealed weapon inside his own home, his conviction must be reversed.

3) We have concluded that Feliciano’s argument fails for two independent reasons. First, since he did not raise this issue in the Superior Court, it is waived on appeal because he has failed to establish plain error. Second, the record reflects that Feliciano was not in his home. Therefore, the legal right he asserts is not supported by the predicate facts that would be necessary to decide his claim on the merits.

4) Sometime prior to September of 2010, Ainsley Ashman (“Ashman”), the landlord of a rental property located at 2513 North Market Street in Wilmington, Delaware, informed his tenant, Feliciano, that he was being evicted and needed to move out of the house he was renting from Ashman. Concerned that Feliciano would not leave the residence, Ashman commenced formal eviction proceedings through the Justice of the Peace Court. On the morning of September 22, 2010, Kevin Gaines (“Constable Gaines”), a constable for the Justice of the Peace Court, posted an eviction

notice at 2513 North Market Street. The eviction notice required all occupants of that residence to vacate the premises within twenty-four hours.

5) Six days after the posting of that notice, on the morning of September 28, 2010, Constable Gaines went to the residence with Ashman to ensure that the residence was clear. Feliciano testified that he was not living at the 2513 North Market Street house on September 28th. He had moved out of the rental property one to two weeks earlier. He testified that he was residing with his mother in Bear, Delaware, on the date of his arrest.

6) At the time that Ashman and Constable Gaines went to 2513 North Market Street on September 28, 2010, Feliciano “should have been out” and did not have permission to be on the property. Upon arriving at the house at 2513 North Market Street on September 28th, Constable Gaines knocked on the front door several times. When no one answered, Ashman used his key to unlock the door and allowed Constable Gaines to enter the residence.

7) Once inside, Constable Gaines proceeded to the top floor, where he observed doors to four different rooms, three of which were open. Constable Gaines checked the three rooms with open doors and then knocked several times on the closed door, which was the door to the master bedroom. While knocking on the door, Constable Gaines repeatedly yelled,

“State Constable, State Constable.” As Constable Gaines stood at the door, it was opened by Feliciano.

8) Constable Gaines asked whether there was anyone else in the residence. As Constable Gaines was speaking with Feliciano, he noticed Feliciano seemed preoccupied. Constable Gaines observed Feliciano lift up the white t-shirt he was wearing, remove a gun from the waistband of his jeans, and toss the gun away from him. The gun bounced onto some sofa cushions which were on the floor and then landed on the floor of the bedroom.

9) Upon seeing Feliciano remove the gun, Constable Gaines drew his weapon, ordered Feliciano to the ground, and radioed Wilmington Police Department dispatch. When officers arrived at the residence, Officer Kreysa placed Feliciano in handcuffs. Officers then went to the area indicated by Constable Gaines and located a 22-caliber revolver, fully loaded with six rounds of ammunition, between the sofa cushions on the floor.

10) After discovering the revolver, Officer Kreysa read Feliciano his *Miranda* rights. Feliciano agreed to speak with officers. Feliciano admitted to Officer Kreysa that he knew he had been evicted and only returned to the property to pack and collect some belongings. When

questioned about the gun in his possession, Feliciano claimed that he had found it in the residence a week earlier and decided to keep it for protection.

11) At trial, Feliciano testified that he placed the gun on the couch cushions located on the floor while he was taking a nap. Feliciano testified that he did not possess the handgun when Gaines entered the master bedroom. Feliciano testified that when Gaines entered the bedroom he noticed the firearm lying on the sofa cushion. This prompted Gaines to draw his weapon and order Feliciano not to move.

12) Feliciano's claim that his carrying a concealed weapon conviction violates a state constitutional right guaranteed by Article I, § 20 of the Delaware Constitution is made for the first time in this direct appeal. Properly preserved claims of constitutional error are subject to *de novo* appellate review.<sup>1</sup> Claims of constitutional violations that are not fairly presented to the trial court are reviewed only for plain error.<sup>2</sup> "Under Delaware law, plain error occurs when an 'error [is] so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial

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<sup>1</sup> See *Wilkerson v. State*, 953 A.2d 152, 156 (Del. 2008); *Bentley v. State*, 930 A.2d 866, 871 (Del. 2007).

<sup>2</sup> *Williams v. State*, 796 A.2d 1281, 1284 (Del. 2002).

process . . . [and is a] material defec[t] which [is] apparent on the face of the record [and is] basic, serious and fundamental . . . .”<sup>3</sup>

13) In the Superior Court, Feliciano argued that he did not carry a concealed deadly weapon:

The one issue in this trial, what this thing will focus about, is he’s being charged with Carrying a Concealed Deadly Weapon, that he hid it on his person so nobody else could see, and that was done with intent. He intentionally had it on his body where no one else could see, and the evidence is going to show that Mr. Feliciano did not carry that weapon concealed.

. . . when the constable came, that the weapon was over on a pillow away from Mr. Feliciano, that Mr. Feliciano did not have a weapon on his person hidden . . .

14) In this appeal, for the first time, Feliciano claims that Article I, section 20 of the Delaware Constitution<sup>4</sup> guarantees a person’s right to carry a concealed weapon in one’s own home. He argues that Delaware’s criminal concealed weapon statute (section 1442) did not prohibit his specific behavior and that his conviction violated the Delaware Constitution. Feliciano had the opportunity to raise that issue in the Superior Court, but failed to do so before, during, or after trial.

15) The record does not permit this Court to address the merits of Feliciano’s claim that the Delaware Constitutional right to bear arms

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<sup>3</sup> *Id.* (quoting *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986)).

<sup>4</sup> “A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use.”

restricts enforcement of Delaware's concealed carry statute, *i.e.*, that there is a Delaware Constitutional "home possession" exception. On the morning of September 28, 2010, the residence at 2513 North Market Street, Wilmington, Delaware, was no longer Feliciano's "home." According to Feliciano, he was residing with his mother in Bear, Delaware, on the date of his arrest and was at the Market Street address that day only to retrieve some items he had left there before he was evicted. During his cross-examination at trial, Feliciano testified that he no longer considered 2513 North Market Street his "home":

Prosecutor: I get that. What I don't understand is you moved out of the house [2513 North Market Street] two weeks prior to September 28th, correct?

Feliciano: Uh-huh.

Prosecutor: Not your house anymore, and you moved out, right?

Feliciano: That's correct.

\* \* \*

Prosecutor: You didn't live in Wilmington anymore, correct?

Feliciano: Correct.

16) We will assume, without deciding, that the Delaware Constitution permits carrying a concealed deadly weapon inside one's home. That assumption does not help Feliciano because the record reflects that

Feliciano was not in his home.<sup>5</sup> Supreme Court Rule 8 limits this Court's appellate review to "questions fairly presented to the trial court . . . ."<sup>6</sup> Although the rule includes an exception "in the interests of justice,"<sup>7</sup> the record facts do not support an application of that exception in Feliciano's appeal. Feliciano has failed to carry his burden of demonstrating plain error.<sup>8</sup>

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Superior Court is affirmed.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>5</sup> *Dickerson v. State*, 975 A.2d 791, 796 (Del. 2009).

<sup>6</sup> Supr. Ct. R. 8.

<sup>7</sup> *Id.*

<sup>8</sup> *Williams v. State*, 796 A.2d at 1284.